

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

SAN DIEGO UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH No. 2005120441

**ORDER GRANTING DISTRICT'S
MOTION TO DISMISS
PETITIONER'S COMPLAINT**

On December 12, 2005, the Office of Administrative Hearings (OAH) received from Student, through Andrea G. Goodman, educational advocate, a Due Process Complaint (Complaint) naming the San Diego Unified School District (District) as the Respondent. On January 23, 2006, OAH received from the District, through its legal counsel, Patrick Frost, a Motion to Dismiss. The District contends that OAH does not have jurisdiction to change the Student's grade, as requested in the Complaint. On January 30, 2006, OAH issued a Notice of Motion that gave Petitioner five business days to file a response to the District's motion. To date, OAH has not received a response from Petitioner.

APPLICABLE LAW

California Education Code section 49066 provides:

(a) When grades are given for any course of instruction taught in a school district, the grade given to each pupil shall be the grade determined by the teacher of the course and the determination of the pupil's grade by the teacher, in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, shall be final.

(b) The governing board of the school district and the superintendent of such district shall not order a pupil's grade to be

changed unless the teacher who determined such grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which such grade was given and is, to the extent practicable, included in all discussions relating to the changing of such grade.

(c) No grade of a pupil participating in a physical education class, however, may be adversely affected due to the fact that the pupil does not wear standardized physical education apparel where the failure to wear such apparel arises from circumstances beyond the control of the pupil.

DISCUSSION

Petitioner's Complaint alleges that the District failed to comply with a provision of the Student's Individualized Education Program (IEP) that gave Student additional time to take exams. Petitioner asserts that during the 2005 summer school session that Student's algebra teacher did not give Student additional time to take tests, and mistakenly averaged her grades. The Complaint contends that the teacher's actions caused Student to get a grade of "C" and not the "B" that Student deserved. As a Proposed Resolution, Petitioner requests that the District change Student's grade. The District contends that OAH does not have jurisdiction to change Student's grade.

OAH does have jurisdiction to hear a contention whether the District complied with a provision of Student's IEP as the District's failure to comply would deny Student a Free Appropriate Public Education. (Cal. Ed. Code § 56501(a).) However, as a remedy, OAH does not have jurisdiction to change Student's grade. Instead, California Education Code section 49066 sets forth Petitioner's exclusive administrative remedy related to a Student's grade. In a similar case, the Hearing Officer determined that the Special Education Hearing Office did not have jurisdiction to hear the Student's challenge of his grades. (*Hacienda La Puente Unified School District* (1997) SN 1105-97.)¹ Since the only relief that Petitioner requests is that the District change Student's grade, Petitioner's proper remedy is identified in the procedures set forth in the District's Administrative Procedure, No. 4705. (District's Motion to Dismiss, Exh. E.) However, Petitioner is given an opportunity to file an Amended Complaint in the event that Petitioner does have a claim which OAH does have jurisdiction to hear.

¹ California Code of Regulations, title 5, section 3085 provides that decisions rendered in a special education matter shall be considered persuasive authority in subsequent proceedings.

ORDER

1. The District's Motion to Dismiss is granted.
2. Pursuant to Title 20 U.S.C. section 1415(c)(2)(E)(i)(II), Petitioner shall be permitted to file an Amended Complaint.
3. The Amended Complaint shall comply with the requirements of Title 20 U.S.C. section 1415(b)(7)(A)(ii) and shall be filed not later than 14 days from the date of this order.
4. If Petitioner fails to file a timely Amended Complaint, the Complaint shall be dismissed and the case will be closed.
5. All mediation, hearing and prehearing conference dates in this matter are vacated.

Dated: February 8, 2006

PETER PAUL CASTILLO
Administrative Law Judge
Special Education Division
Office of Administrative Hearings